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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/854,623  | 05/15/2001  | Stephen K. Vernon    | 15-0259             | 8013             |
| 7590  | 09/28/2005  |                      | EXAMINER            |                  |
| Christopher P. Harris<br>Tarolli, Sundheim, Covell & Tummino LLP<br>526 Superior Avenue, Suite 1111<br>Cleveland, OH 44114-1400 |             |                      | FERRIS, DERRICK W   |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2663                |                  |

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

|                                   |  |
|-----------------------------------|--|
| Application No.<br><br>09/854,623 | Applicant(s)<br><br>VERNON, STEPHEN K. |
| Examiner<br><br>Derrick W. Ferris | Art Unit<br><br>2663                   |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
  - a)  The period for reply expires 3 months from the mailing date of the final rejection.
  - b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see below. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.
13.  Other: \_\_\_\_\_.

  
**RICKY NGO**  
**PRIMARY EXAMINER**  
*SP710*

The examiner thanks applicant for making a correction to claim 16 with respect to the claim objection. Should applicant file a separate amendment for claim 16 then the examiner would withdraw the claim objection due to applicant's amendment for claim 11 (see below). As to claim 1, the examiner respectfully disagrees with applicant's argument. Here applicant argues all packets (or data) are not fixed since each packet (or data) is treated differently. The above subtle difference is not recited in the claims. In particular, the claims recite a single packet (or data) and not necessarily all packets (or data). A single packet (or data) is delayed a fixed delay based in part on a packet's size and predefined delayed parameters, see e.g., paragraph 0037 on page 3 and page 6, paragraph 0052 of Gracon. Thus the claim limitation is met.

As to claim 3, the examiner respectfully disagrees with applicant's argument. See similar reasoning above for claim 1. In addition, the values are stored in memory where the memory is a configuration table (i.e., in order to perform an instruction a processor must store results in memory).

As to claim 11, the claim amendment may require further search and/or reconsideration as applicant has amended the claim to further recite that the fixed delay is slowly adjusted over time by the low pass filter.

As to claims 19 and 26, the examiner respectfully disagrees with applicant's argument. Here packets are serviced if they are queued based on the packet descriptor information. Thus using a reasonable but broad interpretation of the claims, the packets that meet the above criteria are delayed.

As to claims 20 and 27, applicant's argument is persuasive and thus the claim rejection is withdrawn for these claims.

As to claims 5, 6, 10, 15, 16, 23, 29, 24, and 30, see similar reasoning above for claim 1.